

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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83. Bob's Burgers Profit or Loss Statement, Combined Branches, March. 31, 1980
84. Bob's Burgers Profit or Loss Statement, Combined Branches, April. 30, 1980
85. Bob's Burgers Profit or Loss Statement, Combined Branches, Nov. 30, 1980
86. West Mesa High School "Mustangs" Color Advertisement/Coupon
87. Bob's Burgers Paper Cups (see Photograph)
88. Bob's Burgers Paper Bag (see Photograph)
89. Bob's Burgers T-Shirt & Baseball Cap (see Photograph)
90. 1st Signage notice for "Bob's Burgers Home of the Ranchero Burger", 1/22/1997
91. 2nd Signage notice for "Bob's Burgers Home of the Ranchero Burger", 1/22/1997
92. Advertisement for "Apple Pie Bites" in association with the mark "Bob's Burgers Home of the Ranchero Burger"
93. "Closed for Labor Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
94. "Closed on Father's Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
95. Sign Art of New Mexico, Inc. Sketch No. 4593 for "Bob's Burgers Home of the

- Ranchero Burger." 3-13-1997
96. "Closed on Easter Sunday" and "Bob's Burgers Home of the Ranchero Burger" announcement
 97. "Closed on Thanksgiving Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
 98. Construction of Bob's Burgers, 4th Street Location, 1989, which includes "Bob's Burgers Home of the Ranchero Burger" signage (see Photograph)
 99. Bob's Burgers (Federal) - Trademark App Files
 100. Bob's Burgers Home of the Ranchero Burger (Federal) - Trademark App Files
 101. Ranchero Burger (Federal) - Trademark App Files
 102. Ranchero Supreme (Federal) - Trademark App Files
 103. Bob's Burgers (State of New Mexico) - Trademark App Files
 104. Bob's (State of New Mew Mexico) - Trademark App Files
 105. Home of the Ranchero Burger (State of New Mexico) - Trademark App Files
 106. City of Albuquerque Fire Dept. Permit, 6/5/2002, (Menaul)
 107. City of Albuquerque, Business Registration, 12/1/2002 (San Mateo Location)
 108. City of Albuquerque, Health Inspection, No. 513436, 1-1-01 (San Mateo)
 109. City of Albuquerque, Health Inspection, No. 461868, 1-1-00 (Menaul)
 110. City of Albuquerque, Health Inspection, No. 491138, 4-6-01 (Eubank)
 111. Business Registration, 8-24-00, Receipt No. 47085 (Eubank)
 112. City of Albuquerque, Business Registration, 5/1/2004 - 4/30/2005 (Menaul)
 113. City of Albuquerque, Health Inspection, Receipt No. 491092, 4-6-01 (Menaul)
 114. Sedberry & Associates, 2nd Letter of Intent to Lease, Dec. 23, 1999 (Menaul)
 115. Jim Rupas Letter from C. Salas re: lease at Menaul, 1/31/2000
 116. Invoice 7/31/2000, Britton Construction, (Construction at Menaul Location)
 117. Invoice 32444, Albuquerque Safe Company (Menaul)
 118. Certificate of Liability Insurance, 2/16/2000 - Shark Enterprises DBA Bob's Burgers
 119. SOS of NM, 105/2001 Quote for alarm/video surveillance security (San Mateo)
 120. 3/18/2001 Letter from Maestas & Ward re: lease document
 121. 1/18/2001 Letter from Ray Padilla & Associates re: Lease of San Mateo Bldg.
 122. NM Dept. of Labor Quarterly Wage & Contribution Reports - 2003
 123. 1st Copy of Lease between Shark Enterprises DBA Bob's Burgers & Hsu's
 124. 2nd Copy of Lease between Shark Enterprises DBA Bob's Burgers & Hsu's
 125. Environmental Health Department Permit, City of Albuquerque, March 13, 1997 (Coors)
 126. City of Albuquerque, Fire Dept. Permit, Permit No. 1055011 (Menaul)
 127. City of Albuquerque, Business Registration, Record No. PT0018773 (Coors)
 128. City of Albuquerque, Business Registration, Record No. PT0044990 (Coors)
 129. City of Albuquerque, Health Inspection, Receipt No. 491091 (Coors)
 130. City of Albuquerque, Alarm Permit No. 34324 (Coors)
 131. Loss Prevention Survey Report, Date 4/3/02 (Coors)
 132. Environmental Health Dept. Permit, Aug. 10, 1989 (4th Street)
 133. Alarm Ordinance Receipt, Permit No. 23972, Jan. 19, 1994 (4th Street)
 134. Sunco Sign and Lighting Agreement, 9/13/1990 (4th Street)
 135. Sunco Invoice No. 8158, 12/17/1990 (4th Street)
 136. City of Albuquerque, Fire Dept. Permit No. 000345, 12/21/1993

137. City of Albuquerque, Health Inspection, Receipt No. 527628, 4-15-2002 (4th Street)
138. City of Albuquerque, Health Inspection, Receipt No. 491137, 4-06-2001 (4th Street)
139. City of Albuquerque, Business Registration, Facility No. FA0023378 (4th Street)
140. City of Albuquerque, Fire Dept. Permit No. 2257001 (4th Street)
141. City of Albuquerque, Fire Dept. Permit No. 1696011 (4th Street)
142. City of Albuquerque, Fire Dept. Permit No. 1647021 (4th Street)
143. City of Albuquerque, Fire Dept. Permit No. 1357991 (4th Street)
144. City of Albuquerque, Business Registration, Receipt No. 483586 (4th Street)
145. City of Albuquerque, Business Registration, Receipt No. 519708 (4th Street)
146. Bob's Burgers Franchising Company, LLC Operating Agreement
147. Bob's Burgers, Inc. Franchise Agreement, 11 March 1996 - Shark Enterprises, Inc.
148. Bob's Burgers, Inc. Franchise Agreement, 2 October 1998 - Sonny's Enterprises, Inc.
149. Bob's Burgers, Inc. Franchise Agreement, 6 June 2000 - Shark Enterprises, Inc.
150. Addendum to Bob's Burgers, Inc. Franchise Agreement, 6 June 2000 - Shark Enterprises, Inc.
151. Addendum to Franchise Agreement, 6, Feb 2002
152. Bob's Burgers, Inc. Franchise Agreement, 28 Sept. 2000 - Bob's Burgers One, Inc.
153. Amendment to Franchise Agreement, 6 Feb. 2002
154. Bob's Burgers, Inc. Franchise Agreement, 6 February 2002 - Shark Enterprises, Inc.

The above-referenced documents were sent to the Opposer on September 8, 2003 in response to the letter from Michael T. Raggio dated August 27, 2003. Applicant requests that the documents included herewith be entered into the record of the above-referenced opposition proceeding. Applicant further stipulates that the documents included herewith, including all attached Exhibits and documents, constitute evidence in connection with the above-referenced opposition proceeding and that said documents be entered as evidence in connection with the above-referenced proceeding.

Respectfully submitted this 8th day of September, 2003.

By: 
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September 8, 2003

Michael T. Raggio
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Suite 500
Auburn Hills, Michigan 48326

Re: Big Boy Restaurants International vs Clifford Salas
Opposition No. 91154340
Mark: BOB'S BURGERS HOME OF THE RANCHERO BURGER
Our Ref. No: 1000-1026
Your Ref. No. 0225-40001

Dear Mr. Raggio:

We received the your letter dated August 27, 2003, regarding Applicant's Answer to Opposer's First Set of Interrogatories (Nos. 1-52); Applicant's Answer to Opposer's First Set of Requests for Admissions (Nos. 1-33); and Applicant's Answer to Opposer's First Set of Requests for Production of Documents (Nos. 1-36). A copy of the August 27, 2003 letter is attached herewith. In your letter you indicated that you do not believe that the aforementioned responses were adequate under the Federal Rules of Civil Procedure, 37 CFR 2.116. We respectfully disagree with this assessment and provide the following responses.

Activities of Clifford Salas

You indicated in your letter dated August 27, 2003 that a chief issue is the status of Clifford Salas as the Applicant. You asserted that all of the responses confuse Clifford Salas; Bob's Burgers; Bob's Burgers, Inc; Bob's Burgers Franchise Company LLC, and Bob's Burgers One, Inc. into a single entity.

In the Opposer's first set of interrogatories (see page 3), the Opposer defines the "Applicant" as referring to Clifford Salas and "Bob's Burgers" as "Bob's Burgers, Inc., and its officers, directors, employees, servants, divisions, representatives, agents, and all other persons acting or purporting to act on behalf of Bob's Burgers as well as any divisions, subsidiaries, parents, predecessors or related

companies of Bob's Burgers". We consider the term "Applicant" to refer both to Clifford Salas, and "Bob's Burgers" because Clifford Salas is a representative of Bob's Burgers in his capacity as a "Bob's Burgers" franchisee. As has been previously explained to you in the aforementioned Answers by the Applicant to the Opposer, "Bob's Burgers Franchise Company, LLC" is a successor company to "Bob's Burgers, Inc.", which is no longer an active corporation.

In your letter dated August 27, 2003, you stated that it appears Clifford Salas has not used the mark applied for. We respectfully submit to you that the opposite is true. Clifford Salas has used the mark applied for in connection with his "Bob's Burgers" franchise restaurants. For example, we invite you to review Exhibit A10 of Applicant's Answer to Opposer's First Set of Interrogatories (Nos. 1-52). Exhibit A10 depicts an article from the April 27, 2000 edition of the Albuquerque Journal, Business Outlook, which is entitled, "Bob's ready to flip burgers by a very busy corner." The article includes a photograph with the caption: "No. 6 On The Way: Bob's Burgers, the locally grown chain famous for its chile burgers, will open another restaurant, near Menaul and San Mateo, in two months."

The photograph shown in Exhibit A10 depicts the signage and trademark, "Bob's Burgers Home of the Ranchero Burger." Clifford Salas operates the Bob's Burgers restaurant depicted in this photograph as a franchisee under his corporate entity, "Shark Enterprises, Inc". The particular "Bob's Burgers" franchise restaurant shown in Exhibit A10 is located at 5214 Menaul Blvd. in Albuquerque, New Mexico. Clifford Salas also operates "Bob's Burgers" franchise establishments located at 6628 Caminito Coors, N.W. and 6101 San Mateo N.E. in Albuquerque, New Mexico. All of these franchise establishments utilize the "Bob's Burgers Home of the Ranchero Burger" and "Bob's Burgers" trademarks under a grant from "Bob's Burgers Franchising Company, LLC" in connection with restaurant service thereof. Clifford Salas does not own such trademarks, but is permitted to use these marks in his capacity as a franchisee.

Clifford Salas is the son of Tom and Theresa Salas, co-owners of Bob's Burgers Franchising Company LLC. Tom Salas's brother, Robert "Bob" Salas and his wife, Christina Salas, are also co-owners of Bob's Burgers Franchising Company, LLC. Tom Salas, Theresa Salas, Robert "Bob" Salas, and Christina Salas together founded the "Bob's Burgers" restaurant establishment in Albuquerque, New Mexico in the 1960's. As has been previously explained to you in the aforementioned Answers by the Applicant to the Opposer, "Bob's Burgers Franchise Company, LLC", "Bob's Burgers" began as a partnership in the 1960's between Tom Salas, Theresa Salas, Robert "Bob" Salas and Christina Salas. Eventually, in the late 1970's, the partnership became incorporated in the State of New Mexico as "Bob's Burgers, Inc." In the 1990's, "Bob's Burgers, Inc." converted to a franchising entity known as "Bob's Burgers Franchising Company LLC". "Bob's Burgers" was named in the 1960's after Robert "Bob" Salas, one of the founders and co-owners. The trade name "Bob's Burgers" has been utilized openly and continuously since that time by the Salas family in connection with their business "Bob's Burgers".

We must clarify that Clifford Salas is not an owner of Bob's Burgers Franchising Company

LLC, but a franchisee of Bob's Burgers Franchise Company LLC, and the son of two of the owners of the Bob's Burgers Franchise Company LLC, i.e. Tom and Theresa Salas. Clifford Salas operates his "Bob's Burgers" franchise restaurants as a franchisee under a franchise agreement, which permits him to utilize the marks "Bob's Burgers" and "Bob's Burgers Home of Ranchero Burger" and any other marks thereof, in association with his "Bob's Burgers" franchise restaurant. Clifford Salas's particular franchise arrangement involves a franchising of "Bob's Burgers" to "Shark Enterprises, Inc", which does business as (DBA) "Bob's Burgers".

Clifford Salas does not represent that he owns mark. Clifford Salas, has been granted, however, the right to use any and all trademarks owned by "Bob's Burgers Franchise Company, LLC". Although Clifford Salas is not an owner of Bob's Burgers Franchise Company LLC, as a franchisee, he is a representative of Bob's Burgers Franchise Company LLC. It is also important to note that Clifford Salas is one of several likely heirs to the owners of the "Bob's Burgers" franchise company.

Mr. Salas applied for the federal registration of the trademark "Bob's Burgers Home of the Ranchero Burger" with the intention of eventually transferring and assigning the mark to Bob's Burgers Franchise Company LLC. Thus, in applying for the federal registration of the "Bob's Burgers Home of the Ranchero Burger" mark, Mr. Salas was not applying for the mark for use his company's sole use or for his ownership, but for benefit of the franchisor, "Bob's Burgers Franchise Company, LLC," which is co-owned by his parents, Tom and Theresa Salas, and his Aunt and Uncle, Robert and Christina Salas.

Recall that "Bob's Burgers Franchise Company, LLC" is a successor to "Bob's Burgers, Inc", which in turn was a successor to the original "Bob's Burgers" partnership founded by Tom and Theresa Salas and Robert "Bob" and Christina Salas in Albuquerque in the 1960's. Tom and Theresa Salas are also the owners of "Sonny's Enterprises, Inc.", while Robert "Bob" and Christina Salas are the owners of "Bob's Burgers One, Inc." "Sonny's Enterprises, Inc." and "Bob's Burgers One, Inc." also do business as (DBA) "Bob's Burgers". Note that "Bob's Burgers, One, Inc." and "Bob's Burgers No. 1, Inc." comprise the same entity.

Clifford Salas is therefore not the owner of the mark "Bob's Burgers Home of the Ranchero Burger," but merely acting as a representative (i.e., the Applicant) on behalf of "Bob's Burgers Franchising Company, LLC" and its various franchisees. Mr. Salas intends to assign ownership of the mark to "Bobs' Burgers Franchising Company, LLC". Mr. Salas did receive verbal authorization from the owners of "Bob's Burgers Franchising Company, LLC" to apply for federal registration of the mark on their behalf. Mr. Salas is the owner of "Shark Enterprises, Inc.", which does business (i.e., DBA) as "Bob's Burgers" and uses the mark "Bob's Burgers Home of the Ranchero Burger" in connection with the restaurant services offered at his franchise restaurants. A document entitled "Bob's Burgers Organizational Chart" is included herewith, which outlines the general configuration of the Bob's Burgers franchise company, along with franchisees and "Bob's Burgers" franchise restaurant locations.

We believe this description clarifies the record regarding Clifford Salas's activities with respect to the mark "Bob's Burgers Home of the Ranchero Burger" and Bob's Burgers Franchise Company LLC, including any and all franchisees of Bob's Burgers Franchise Company LLC, utilizing the same "Bob's Burgers Home of the Ranchero Burger".

Moot Objections

You argued that there are several responses where there is no responsive information, but there is an objection, or there is a response and an objection. You asserted that it is not clear whether there might be additional information not produced but objected to, and invited the Applicant to confirm that if he will not rely on any additional information encompassed by the following requests, Opposer will not file a motion regarding the objections in the following responses: Interrogatory Nos. 36, 37, 38, 41, 50 and Request for Production of Documents Nos. 6, 12, 13, 23, 24, 26, 27, and 28. Applicant therefore confirms that he will not rely on any additional information encompassed by said requests, i.e., Interrogatory Nos. 36, 37, 38, 41, 50 and Request for Production of Documents Nos. 6, 12, 13, 23, 24, 26, 27, and 28.

Financial Records

You indicated that the Opposer propounded several discovery requests relating to sales and reported income, and argued that these requests are relevant to: 1) ownership of the mark; and 2) extend and nature of use of the mark. You asserted that tax records will show whether and to what extend Clifford Salas reported income from restaurant services, as claimed in the trademark application. You also argued that the total of sales is clearly relevant to the quantum of use, the likelihood of expansion, and the likelihood of confusion. Additionally, you stated that the information regarding the average transaction amount directly relates to the level of consumer care in its purchasing decision.

We believe that to compile such information, even summaries of sales, is a burden to the Applicant. Applicant is a small business owner and as such, does not have a great deal of time to devote to activities outside the day-to-day management and running of his business, other than to the time he spends with his family. Additionally, you must appreciate that there are financial costs associated with hiring an accountant to compile such information. This is an additional burden involved in compiling such financial information.

Thus, it is burdensome upon Applicant to devote the time and resources to compiling such financial information for Opposer. We believe that the evidence supplied thus far by Applicant provides sufficient evidence of "secondary meaning". For example, Applicant invites Opposer to again review Exhibits A10, A11, and A13 of Applicant's Answer to Opposer's First Set of Interrogatories (Nos. 1-52). Exhibits A10, A11 and A13 were compiled from publicly available sources (i.e., newspaper articles) that describe the type of restaurant services offered by Applicant's

business, which evidences the "secondary meaning" earned by Applicant's business "Bob's Burgers". Secondary meaning attaches to a trademark when the public considers a term or logo to be an indicator of source and quality of a product, rather than merely descriptive of that product. As you well know, secondary meaning develops after long and continuous use. We believe that Exhibits A10, A11 and A13 provide sufficient evidence of such secondary meaning.

We are, however, attempting to make a good faith effort to comply with your requests for financial information, and as such we are providing you with this letter, copies of the following documents, which are enclosed herewith:

1. Shark Enterprises, Inc. Income Statement, December 1997 (Coors)
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78. Bob's Burgers Profit or Loss Statement, Combined Branches, Dec. 31, 1980
79. Bob's Burgers Profit or Loss Statement, Combined Branches, Oct. 31, 1980
80. Bob's Burgers Profit or Loss Statement, Combined Branches, March. 31, 1980
81. Bob's Burgers Profit or Loss Statement, Combined Branches, April. 30, 1980
82. Bob's Burgers Profit or Loss Statement, Combined Branches, Nov. 30, 1980

We have made a good faith effort to compile such information for you. It can be appreciated, of course, that many financial documents collected over the years by our client have been lost or destroyed.

Advertisements and Use of Mark

You indicated that the Opposer propounded several discovery requests relating to the quantum and nature of the use of the mark applied for, which directly relates to the strength of the mark and the likelihood of confusion. Applicant has already provided Opposer with evidence which does relate to the quantum and nature of the use of the mark applied for, which directly relates to the strength of the mark and the likelihood of confusion. For example, Exhibit A10 clearly shows a photograph of signage indicative of "Bob's Burgers Home of the Ranchero Burger". Additionally, the newspaper articles shown in Exhibits A10, A11 and A13 provide evidence of the history and nature of the Applicant's mark, along with a description of the type of food offered under Applicant's mark.

Exhibit A15 provides Opposer with a sample coupon, which is a form of advertisement that shows the use of the mark "Bob's Burgers Home of the Ranchero Burger" along with a listing of some of the locations of "Bob's Burgers". We believe that such exhibits, along with others provided to Opposer, provide sufficient evidence of the quantum and nature of the use of the mark applied for, which directly relates to the strength of the mark and the slim likelihood of confusion with Opposer's marks.

Applicant does not generally maintain records of advertising material created and distributed over the years. It is believed that much of the success of "Bob's Burgers" has been due less to commercial advertising and more to the quality of the food, the "Bob's Burgers" signage and finally, simply "word of mouth". Applicant can, however, provide Opposer with some additional advertising samples, which are included herewith as follows:

1. West Mesa High School "Mustangs" Color Advertisement/Coupon
2. Bob's Burgers Paper Cups (see Photograph)
3. Bob's Burgers Paper Bag (see Photograph)
4. Bob's Burgers T-Shirt & Baseball Cap (see Photograph)

5. 1st Signage notice for "Bob's Burgers Home of the Ranchero Burger", 1/22/1997
6. 2nd Signage notice for "Bob's Burgers Home of the Ranchero Burger", 1/22/1997
7. Advertisement for "Apple Pie Bites" in association with the mark "Bob's Burgers Home of the Ranchero Burger"
8. "Closed for Labor Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
9. "Closed on Father's Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
10. Sign Art of New Mexico, Inc. Sketch No. 4593 for "Bob's Burgers Home of the Ranchero Burger." 3-13-1997
11. "Closed on Easter Sunday" and "Bob's Burgers Home of the Ranchero Burger" announcement
12. "Closed on Thanksgiving Day" and "Bob's Burgers Home of the Ranchero Burger" announcement
13. Construction of Bob's Burgers, 4th Street Location, 1989, which includes "Bob's Burgers Home of the Ranchero Burger" signage (see Photograph)

Privileged Information

You indicated that the Opposer propounded several requests relating to Applicant's trademark registration activity. Applicant has agreed to provide you with the information you requested. Enclosed herewith you will find copies of documents/information contained in our files, which relate to the follow trademark applications:

1. Bob's Burgers (Federal)
2. Bob's Burgers Home of the Ranchero Burger (Federal)
3. Ranchero Burger (Federal)
4. Ranchero Supreme (Federal)
5. Bob's Burgers (State of New Mexico)
6. Bob's (State of New Mew Mexico)
7. Home of the Ranchero Burger (State of New Mexico)

Leases and License

You indicated that Opposer propounded several discovery requests regarding licenses or leases relating to restaurant services. Applicant has agreed to provide you with the information you requested. Enclosed herewith you will find copies of the following documents:

1. City of Albuquerque Fire Dept. Permit, 6/5/2002, (Mensual)
2. City of Albuquerque, Business Registration, 12/1/2002 (San Mateo Location)
3. City of Albuquerque, Health Inspection, No. 513436, 1-1-01 (San Mateo)
4. City of Albuquerque, Health Inspection, No. 461868, 1-1-00 (Mensual)

5. City of Albuquerque, Health Inspection, No. 491138, 4-6-01 (Eubank)
6. Business Registration, 8-24-00, Receipt No. 47085 (Eubank)
7. City of Albuquerque, Business Registration, 5/1/2004 – 4/30/2005 (Menaual)
8. City of Albuquerque, Health Inspection, Receipt No. 491092, 4-6-01 (Menaual)
9. Sedberry & Associates, 2nd Letter of Intent to Lease, Dec. 23, 1999 (Menaual)
10. Jim Rupas Letter from C. Salas re: lease at Menaual, 1/31/2000
11. Invoice 7/31/2000, Britton Construction, (Construction at Menaual Location)
12. Invoice 32444, Albuquerque Safe Company (Menaual)
13. Certificate of Liability Insurance, 2/16/2000 – Shark Enterprises DBA Bob's Burgers
14. SOS of NM, 105/2001 Quote for alarm/video surveillance security (San Mateo)
15. 3/18/2001 Letter from Maestas & Ward re: lease document
16. 1/18/2001 Letter from Ray Padilla & Associates re: Lease of San Mateo Bldg.
17. NM Dept. of Labor Quarterly Wage & Contribution Reports – 2003
18. 1st Copy of Lease between Shark Enterprises DBA Bob's Burgers & Hsu's
19. 2nd Copy of Lease between Shark Enterprises DBA Bob's Burgers & Hsu's
20. Environmental Health Department Permit, City of Albuquerque, March 13, 1997 (Coors)
21. City of Albuquerque, Fire Dept. Permit, Permit No. 1055011 (Menaual)
22. City of Albuquerque, Business Registration, Record No. PT0018773 (Coors)
23. City of Albuquerque, Business Registration, Record No. PT0044990 (Coors)
24. City of Albuquerque, Health Inspection, Receipt No. 491091 (Coors)
25. City of Albuquerque, Alarm Permit No. 34324 (Coors)
26. Loss Prevention Survey Report, Date 4/3/02 (Coors)
27. Environmental Health Dept. Permit, Aug. 10, 1989 (4th Street)
28. Alarm Ordinance Receipt, Permit No. 23972, Jan. 19, 1994 (4th Street)
29. Sunco Sign and Lighting Agreement, 9/13/1990 (4th Street)
30. Sunco Invoice No. 8158, 12/17/1990 (4th Street)
31. City of Albuquerque, Fire Dept. Permit No. 000345, 12/21/1993
32. City of Albuquerque, Health Inspection, Receipt No. 527628, 4-15-2002 (4th Street)
33. City of Albuquerque, Health Inspection, Receipt No. 491137, 4-06-2001 (4th Street)
34. City of Albuquerque, Business Registration, Facility No. FA0023378 (4th Street)
35. City of Albuquerque, Fire Dept. Permit No. 2257001 (4th Street)
36. City of Albuquerque, Fire Dept. Permit No. 1696011 (4th Street)
37. City of Albuquerque, Fire Dept. Permit No. 1647021 (4th Street)
38. City of Albuquerque, Fire Dept. Permit No. 1357991 (4th Street)
39. City of Albuquerque, Business Registration, Receipt No. 483586 (4th Street)
40. City of Albuquerque, Business Registration, Receipt No. 519708 (4th Street)

Documents from Customers

You indicated that documents, which can identify customers directly relate to the issue of likelihood of confusion and to any survey conducted in this request. As Applicant explained

previously, Applicant does not survey or track its customers. Applicant confirms that such survey/tracking documents do not exist.

Franchise Agreement

In response to your request for a full copy of the franchise agreement for Bob's Burgers Franchise Company, LLC, we are enclosing a full copy of the franchise formation agreement and an agreement labeled "Bob's Burgers, Inc. Franchise Agreement." Note that because "Bob's Burgers Inc" is no longer an active corporate entity, this agreement should be considered as a franchise agreement between the successor organization "Bob's Burgers Franchise Company LLC" and Clifford Salas (i.e., "Shark Enterprise" doing business as "Bob's Burgers"). Thus, the following two agreements are provided herewith:

1. Bob's Burgers Franchising Company, LLC Operating Agreement
2. Bob's Burgers, Inc. Franchise Agreement, 11 March 1996 – Shark Enterprises, Inc.
3. Bob's Burgers, Inc. Franchise Agreement, 2 October 1998 – Sonny's Enterprises, Inc.
4. Bob's Burgers, Inc. Franchise Agreement, 6 June 2000 – Shark Enterprises, Inc.
5. Addendum to Bob's Burgers, Inc. Franchise Agreement, 6 June 2000 – Shark Enterprises, Inc.
6. Addendum to Franchise Agreement, 6, Feb 2002
7. Bob's Burgers, Inc. Franchise Agreement, 28 Sept. 2000 – Bob's Burgers One, Inc.
8. Amendment to Franchise Agreement, 6 Feb. 2002
9. Bob's Burgers, Inc. Franchise Agreement, 6 February 2002 – Shark Enterprises, Inc.

Request for Admission No. 28

You noted in your letter dated August 27, 2003 that we have not been able to produce any evidence that Opposer's mark was obtained fraudulently. Applicant never specifically raised the issue of fraud with regard to Opposer's "Bob's" trademark. We do note that the issue of fraud in obtaining a trademark registration can be raised a basis for canceling a registrant's registered trademark.

We believe that a strong case can be made that your client has failed to properly police its "Bob's" trademarks over at least the last four decades, which is tantamount to an abandonment of the "Bob's" marks. At the very least, the failure to properly police a trademark can amount to a substantial weakening of a trademark. To this end, we are considering a "Petition for Cancellation" of one or more of your client's "Bob's" trademarks.

First, Second and Third Counterclaims

In your letter dated August 27, 2003, you requested our concurrence in a motion to dismiss the First and Second Counterclaims for failing to state a claim for which relief may be granted. We

will not concur in such a motion, because relief may be granted with respect to both the first and second counterclaims. Such a relief can be granted at the equitable discretion of the TTAB, and may be in the form of, for example, cancellation or partial cancellation and restriction of Opposer's marks. Regarding your request for a Summary Judgment with respect to the third counterclaim, we will not concur in such a request.

We believe the record demonstrates that Big Boy International may have lost the rights to its "Bob's" trademarks in several regions of the United States, and particularly in the Southwestern states, specifically New Mexico, Colorado, and Texas due to the failure of Big Boy International to properly police such marks over at least the last 30 years. The record clearly demonstrates that our client, "Bob's Burgers" has been operating under the trademark "Bob's Burgers" since the 1960's and the mark "Bob's Burgers Home of the Ranchero Burger" since at least 1989.

We believe the record also clearly demonstrates that your client has failed to police its marks properly and may be in danger of losing its "Bob's" marks, at least in certain geographical regions of the United States, such as the State of New Mexico. Additionally, the record demonstrates that our client has established rights to the marks "Bob's Burgers" and "Bob's Burgers Home of the Ranchero Burger" and quite possibly to the mark "Bob's" in the State of New Mexico, rights that by operation of law may be superior to that of Big Boy International.

Our client, Clifford Salas, is a small business owner and as such, his livelihood is based to a large extent on the goodwill and secondary meaning attached to the marks "Bob's Burgers" and "Bob's Burgers Home of the Ranchero Burger". We generally do not believe that there is a conflict between your client's "Bob's" marks and our client's use of the marks, "Bob's Burgers" and "Bob's Burgers Home of the Ranchero Burger," due to distinct differences between the marks and type of restaurant services thereof, including geographical locations served. We suggest that a visit by your client or a representative of your client to any one of the "Bob's Burgers" restaurants in the State of New Mexico is likely dispel your belief that there is a likelihood of confusion between our client's "Bob's Burgers" trademarks, including "Bob's Burgers Home of the Ranchero Burger" and "Bob's Burgers," and your client's "Bob's" marks.

Resolution

We are interested in seeing this matter settled in a manner that is satisfactory to both parties. Therefore, in order to bring the above-referenced trademark opposition to a close as soon as possible, our client is interested in reaching a mutually beneficial agreement with your client Big Boy International, which will allow both of our clients to continue using their respective marks as previously established.

Such an agreement would ideally permit our client to continue using its "Bob's Burgers" and "Bob's Burgers Home of the Ranchero" trademarks, while permitting your client, Big Boy International, to eventually open and operate restaurants in the state of New Mexico under their

“Bob’s” marks if your client so chooses. If such an agreement cannot be reached, your client runs the risk of losing its “Bob’s” marks, and may be prevented from opening up franchise locations in the State of New Mexico, and other areas around the country under its “Bob’s” marks, including possibly its “Bob’s Big Boy” trademark.

We believe that such an agreement would amount to a “win win” situation for both of our clients, thereby saving additional time, energy and legal resources. We suggest holding a teleconference to discuss a mutually beneficial agreement to resolve this matter. Please call me to arrange for such a teleconference. You may also contact me via e-mail at lortiz@olpatentlaw.com. We look forward to hearing from you.

Sincerely,



Luis M. Ortiz
ORTIZ & LOPEZ, PLLC

Enclosures

cc: Clifford Salas (w/enclosures)
Trademark Trial & Appeal Board (w/enclosures)
Michael Gibbs, Esq. (w/out enclosures)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRANSMITTAL LETTER (GENERAL)
(With Certificate of Mailing by First Class Mail)

Applicant/Registrant: **Clifford Salas**
Serial No.: **78/077,636**
Registration No.: **2,707,103**
Trademark: **BOB'S BURGERS HOME OF THE RANCHERO BURGER**

Docket No.
1000-1026

TO THE COMMISSIONER FOR TRADEMARKS:

Transmitted herewith is the following:

REQUEST FOR ENTRY OF DOCUMENTS INTO RECORD OF OPPOSITION PROCEEDING

Opposition No. 91154340

09-10-2003
U.S. Patent & TMO/TM Mail Rpt Dt. #2

☒ No fee is required.

☐ Please charge Deposit Account No. _____ in the amount of _____

☐ A check in the amount of _____ is attached.
Any excess or insufficiency should be credited or debited to Deposit Account No. _____

Kermit D. Lopez

Signature

Dated: September 8, 2003

Kermit D. Lopez
Ortiz & Lopez, PLLC
P.O. Box 4484
Albuquerque, NM 87196-4484

I certify that this document and fee is being deposited on **Sept. 8, 2003** with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Kermit D. Lopez

Signature of Person Mailing Correspondence

Kermit D. Lopez

Typed or Printed Name of Person Mailing Correspondence

cc: